

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Leonard D. Martin

Houston, TX

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File No. 98-HU-147

NAL/Acct.No. X3254-003

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 3, 2000

By the Enforcement Bureau, Houston Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Leonard D. Martin apparently violated Section 301 of the Communications Act of 1934 ("Act"), as amended,¹ by operating an unlicensed radio station without Commission authorization; and Section 303(n) of the Act,² by failing to allow inspection of his radio station. We conclude that Leonard D. Martin is apparently liable for a forfeiture in the amount of seventeen thousand dollars (\$17,000).

II. BACKGROUND

2. In May, 1998, the Commission received a written complaint from an Amateur Radio operator asserting that an Amateur Radio station identifying with the callsign KC5WHN operated on unauthorized frequencies. On November 3, 1998, the Legal Advisor for Enforcement, Compliance and Information Bureau, sent a letter to Leonard D. Martin, licensee of record of Amateur Radio station KC5WHN. The letter advised Martin of complaints received by the Commission alleging that he operated on unauthorized frequencies. In response to the letter, Martin telephoned the CIB Legal Advisor for Enforcement and generally denied the alleged unauthorized operation.

3. On February 27, 1999, a Commission agent, using a mobile automatic direction finding ("MADF") vehicle, observed voice radio transmissions on the frequencies 27.545 and 27.535 MHz. The frequency 27.545 MHz is allocated exclusively to radio stations of the United States government. The frequency 27.535 MHz is allocated exclusively to radio stations licensed in the Industrial Radio Service. The radio station did not identify itself, but responded to the name "Leonard." The agent determined that the source of the transmissions was an antenna on the residence at 4415 Spellman, Houston, Texas, the address listed on Martin's Amateur Radio license. There was no evidence of a Commission authorization for this operation.

4. On March 15, 1999, a Commission agent, using a MADF vehicle, observed voice radio

¹ 47 U.S.C. § 301.

² 47 U.S.C. § 303(n).

transmissions on 27.370 MHz, a frequency allocated as a “guard” frequency between channels in the Citizens Band Radio Service. The station identified with the name “Leonard.” The agent determined that the source of the transmissions was a vertical antenna on the residence at 4415 Spellman, Houston, Texas, the address listed on Martin’s Amateur Radio license. Immediately thereafter, the agent knocked on the door of the residence and was met by Martin. The agent requested to inspect the radio station inside the residence, and Martin refused. The agent advised Martin that his operation on 27.545 and 27.535 MHz constituted unlicensed operation in violation of Section 301 of the Act, because Martin had no Commission authorization to operate on those frequencies. The agent also advised Martin that his refusal to allow inspection constituted violation of Section 303(n) of the Act.

5. On April 2, 1999, the Commission’s Houston Office issued to Martin an Official Notice of Violation for operation of his Amateur Radio station in violation of Sections 301 and 303(n) of the Act. On April 8, 1999, the Houston Office received a letter from Martin in response to the Official Notice of Violation. In the letter, Martin stated “I now fully understand that operation on the frequencies outlined is a violation...” “... that the FCC has the authority to inspect all radio installations...” and “... I promise no further action by the Commission will be necessary to insure my complete compliance with the FCC Rules...”

6. On July 22, 1999, Martin submitted to CIB Legal Advisor for Enforcement his Amateur Radio license for cancellation. On July 23, 1999, CIB Legal Advisor for Enforcement sent Martin a letter acknowledging receipt of the license and confirming that Martin’s Amateur Radio license KC5WHN was cancelled effective July 23, 1999. The letter also warned Martin that unlicensed radio operation would constitute violation of Section 301 of the Act.

7. On October 19, 1999, the Commission’s Houston Office received a complaint from a neighbor of Martin’s that Martin’s radio operation was continuing to cause interference to electronic equipment in their home. That same day, a Commission agent, using a MADF vehicle, observed voice radio transmissions on 27.535 MHz, a frequency allocated exclusively to licensed stations of the Industrial Radio Service. The agent determined that the source of the transmissions was a vertical antenna on the residence at 4415 Spellman, Houston, Texas, Martin’s residence. Immediately thereafter, the agent visited the neighbor complaining of radio interference and observed interference on the neighbor’s telephone.

8. On October 26, 1999, a Commission agent, using a MADF vehicle, observed voice radio transmissions on 27.455 MHz, a frequency allocated exclusively to licensed stations in the Industrial Radio Service. The agent determined that the source of the transmissions was a vertical antenna on the residence at 4415 Spellman, Houston, Texas, Martin’s residence. There was no evidence of a Commission authorization for this operation. Immediately thereafter, the agent knocked on the door of the residence and was met by Martin. The agent requested to inspect the radio station inside the residence, and Martin refused. Martin stated that he believed he was being unfairly targeted for enforcement because there were many other operators that transmitted on unauthorized frequencies.

III. DISCUSSION

9. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license.³ Section 303(n) of the Act sets forth the Commission’s authority to inspect all radio installations associated with stations required to be licensed by, or subject to the provisions

³ 47 U.S.C. § 301

of, any Act, in order to ascertain whether they conform to the provisions of any Act.⁴

10. Based on the evidence before us, we find that on February 27, October 19, and October 26, 1999, Leonard D. Martin repeatedly⁵ and willfully⁶ violated Section 301 of the Act by operating radio transmission apparatus without a Commission authorization. We also find that on March 15 and October 26, 1999, Leonard D. Martin repeatedly and willfully violated Section 303(n) of the Act by refusing to allow an inspection of his radio station upon reasonable request by an authorized Commission representative.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"), the base forfeiture amounts are \$10,000 for unlicensed operation and \$7000 for failure to allow inspection.⁷ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Martin's violations were repeated and willful, and resulted in harm in the form of electronic interference to neighbors' home electronic equipment. Martin was advised of these violations numerous times, both orally and in writing, by Commission representatives and Martin indicated that he fully understood the requirements of the Act. Martin repeated the violations after receiving these warnings. Applying the *Forfeiture Policy Statement* and statutory factors to the instant case, a \$17,000 forfeiture is warranted.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Commission's Rules,¹⁰ Leonard D. Martin is hereby NOTIFIED of his APPARENT LIABILITY FOR A FORFEITURE in the amount of seventeen thousand dollars (\$17,000) for violating Section 301 of the Act¹¹ and Section 303(n) of the Act.¹²

⁴ 47 U.S.C. § 303(n)

⁵ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁶ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁷ 12 FCC Rcd 17087 (1997), *recon. denied*, FCC 99-407 (rel. December 28, 1999).

⁸ 47 U.S.C. § 503(b)(2)(D). See also *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01 (discussion of upward and downward adjustment factors).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹¹ 47 U.S.C. § 301

¹² 47 U.S.C. § 303(n)

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules,¹³ within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Leonard D. Martin SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3254-003.

15. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No. X3254-003, and must include the NAL/Acct. No. X3254-003.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Leonard D. Martin at 4415 Spellman, Houston, Texas 77035.

FEDERAL COMMUNICATIONS COMMISSION

Loyd P. Perry
Resident Agent, Houston Office, Enforcement Bureau

¹³ 47 C.F.R. § 1.80.

¹⁴ See 47 C.F.R. § 1.1914.